

## MEMORANDUM OF LAW

DATE: December 17, 1985

TO: Councilmember Gloria D. McColl

FROM: City Attorney

SUBJECT: Potential Disqualification on Item 338 Dealing  
With the Mid-City Planned District

On the docket of December 17, 1985, is item 338 which proposes the adoption of the Mid-City Planned District and related actions which would affect most property zoned for commercial and multi-family use.

For reasons not germane to the instant discussion, we were just recently asked to provide a written opinion on whether or not you could participate in the consideration of this matter. Hence we met with you on December 16, 1985 and you candidly outlined five (5) pieces of property all listed, except for the recently acquired 4373 University Avenue, on your public Statement of Economic Interest that lie within the planned

district. These properties are held in various forms ranging from your separate property to community property to properties held in trust under which you are both trustee and potential beneficiary.

You ask that given these property interests, whether or not you should disqualify yourself.

For reasons that will be clear from the following, we simply have not had enough time to individually review and analyze the foreseeable financial impact the multiple changes proposed by this docket item would have on your financial interests. Given the limited time and extended complexities of the contingencies and manner in which the property is held, we can only outline the law and regulations on such matters and offer our best direction.

The Political Reform Act found in California Government Code section 81000 et seq. prohibits a public official from making or participating in making a governmental decision in which he or she knows or has reason to believe he or she has a financial

interest. California Government Code section 87100. A person has a financial interest within the meaning of section 87100, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally on

. . .

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

. . .

California Government Code section 87103.

You clearly have real property interests and interest in a

business entity, since that term includes trusts. California Government Code section 82005. The Fair Political Practices Commission is charged with administering and construing the above-quoted sections and they have required a four (4) part test for disqualification:

Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision.

First, it must be reasonably foreseeable that the governmental decision will have a

financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material.

And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

In re Opinion requested by Tom Thorner, 1  
FPPC Opinions 198, 202 (December 4,

1975).

We have not been afforded the time or tools necessary to definitely explore all four of these questions which would be necessary to form a precise answer. However, we have found a similar circumstance where a planning commissioner was a limited partner in a partnership that owned a vacant lot in a commercial zone of a proposed "core area" and was in the process of constructing a commercial building on it.

In disqualifying the commissioner, a Mr. Willett, from participation, the FPPC ruled:

The benefit to be realized by persons with interests such as those of Mr. Willett appears to be immediate; and the decisions to be made in adopting the "core area" plan appear crucial to the success of the investment. For example, it seems likely that adoption of certain proposals for the "core area" would serve to increase the value of Commissioner Willett's property, but could, on the other hand, serve to increase the number of competing leased property owners and hence, the profit to be realized by the building itself. We cannot conclude that an effect of

a decision on Commissioner Willett's investment qualifies as an effect on any significant segment of the public generally. Rather, aspects of the plan are likely to have particular and identifiable effects on Commissioner Willett's investment.

Accordingly, we conclude the he is barred from participating in decisions on those aspects of the plan which will materially affect his investment.

In re Opinion requested by William L.

Owen, 2 FPPC Opinions 77, 82 (1976).

While 2 California Administrative Code section 18702 and 18702.2 define "material financial effect," you are unable to estimate and we have found no separate source that could forecast the financial effect the Mid-City Plan would have on your properties or interest under the trust. Where the financial effect is not able to be quantified, the FPPC has declined to follow the specific guidelines and has favored disqualification on the general test of 2 California Administrative Code section 18702(a) which provides:

18702 Material Financial Effect

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

The whole point of the Mid-City Plan is to improve the area and provide a climate "to facilitate the economic development of commercial establishments . . . ." Proposed Section 103.1500. Obviously whether this occurs and affects your property interest is speculative. However out of an abundance of caution and adopting the general test used by the FPPC, we believe the prudent decision would be to abstain from any consideration of the matter.

Such an abstention would be consistent with the spirit of the Political Reform Act that teaches that the sections should be liberally construed (Section 81003) and comports with our own Council Policy 000-4, which directs that decisions in which there may be even an indirect personal interest be avoided.

We must stress that conflict questions are complex matters requiring rigorous review of the facts and applicable regulations which are constantly changing. Hence proper time for analysis and response is of the utmost concern.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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